table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF TRANSPORTATION

Andrew B. Steinberg, of Maryland, to be an Assistant Secretary of Transportation.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

Mr. FRIST. Mr. President, we have completed a lot of business. We may have a little more business in a bit. While we are conducting that business, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER OF BUSINESS

Mr. FRIST. Mr. President, in the early hours of the morning, we are going to be closing down here in a few minutes. We do have some very important business to conduct, first on the Defense authorization conference report, and closing up with a few other matters.

It has been a long day, with a lot of productive work. The Democratic leader and I were just commenting it has been a constructive and productive last 2 or 3 weeks.

Mr. President, before I propound a unanimous consent request on the Defense authorization conference report, I turn to my colleague, the distinguished Senator from Oklahoma, who has been intimately involved in this issue over the last several days and the last several hours.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I thank the leader for working with me on getting the requirements of what we need to do to get control of our spending in this country. I also want to thank the House leadership for their commitment in attempting to do that.

I had threatened to object to the unanimous consent request that we pass this bill. That is not a desire or something I want to do. But what I do want to do is make sure the money we spend actually goes for Defense. And we had, in both the appropriations bill and in the authorization bill, by a vote of 96 to 1 in this body, that even though we do not report earmarks in the Senate, we do not label them, we do not say who put them, we did have an agreement—with amendments in both those bills—that we will allow the Pentagon to report to the American public on the status of those earmarks and back to us as a Congress whether or not they met the mission of the Defense Department because about 40 percent of them do not. It is all about transparency, the American people seeing where we are spending our money.

I appreciate the leaders both here and in the House agreeing to bring this amendment—which was offered and accepted and passed here; and what was thrown out of the conferences—up in the lame-duck session. And given that commitment from both the House leadership and the Senate leadership, I will not object to this bill.

I will tell people, other than the earmarks that are in this bill, this is a needed bill, and a lot of the earmarks are appropriate and needed. But the American people ought to be seeing where we are spending the money, and they cannot. This amendment would have allowed them to see that.

The agreement of, hopefully, bringing this back, so the American people can actually know where money is spent, I appreciate the leader's help in accomplishing that.

I yield the floor.

Mr. FRIST. Mr. President, it looks like we will be able to proceed with our unanimous consent request and pass a very, very important bill to this country. We passed earlier today the appropriations for our Department of Defense. And with this, on the same day, we will be able to pass the authorization bill.

## JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007—CONFERENCE REPORT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the conference report to accompany H.R. 5122, the Defense authorization bill, and the conference report be agreed to, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Democratic leader.

Mr. REID. Mr. President, reserving the right to object, I want the RECORD to reflect the hard work that has gone into this bill by the managers of the bill, the chairman, Senator WARNER, and the ranking member, Senator LEVIN. There are no two finer Senators in the Senate. They have worked so diligently and so hard on this legislation for which they deserve so much credit for getting us to where we are. They are both dedicated to the service of their country. They are just two of the best, and if not for them we could not be where we are.

I also express my appreciation to Senator COBURN for allowing us to move forward on this legislation this morning.

The PRESIDING OFFICER. Is there objection?

Mr. REID. No.

The PRESIDING OFFICER. Without objection, it is so ordered.

INSURRECTION ACT

Mr. KENNEDY. Mr. President, I want to applaud the Senator from Virginia for his amendment in the Defense authorization bill. This amendment clarifies the President's authority to employ the Armed Forces inside the United States to restore public order when domestic violence has occurred to such an extent that the State authorities are not able to enforce the laws and protect the legal rights of its people.

Late August last year, New Orleans and gulf coast residents saw the devastation nature can sow. We are now in another hurricane season. Communicable diseases like SARS and avian flu are still real risks. No one needs reminding that bin Laden and al-Qaida are still out there. We need to clarify the applicability of this law to modern problems.

This is a task that uniquely belongs to Congress. It is Congress's responsibility, according to the Constitution, to make rules ''for the government and regulation'' of the Armed Forces. Senator Warner's provision takes a real step in the right direction.

Mr. WARNER. Mr. President, I'm glad Senator KENNEDY drew attention to my amendment to the Militia Acts, sometimes referred to as the ''Insurrection Act.'' These statutes have not been amended for a half century. We urgently need a statute that clarifies when and how the President can use the Armed Forces in the homeland.

This is not a new problem. The Second Congress passed a law in May 1792 giving the President power to call out the Armed Forces inside the United States. Congress carefully defined when the President could act. In certain cases, he had to get a judge's approval before calling forth the troops. When President Washington put down the Whiskey Rebellion, he used this 1792 statute.

Congress made changes to this authorization in 1795, 1807, 1861 and 1871. Clearly, Congress was responding to threats of the day. These included Aaron Burr's conspiracy, the Civil War, and Reconstruction. The end result of all these amendments was a very sweeping statute with open-ended authorization in some situations, but ambiguous authority to use the Armed Forces in others. So we clearly needed to revisit this.

Mr. KENNEDY. As I understand the amendment, it defines when the President can call on the Armed Forces if there is a major public emergency at home. The amended statute now lists specific situations in which the troops can be used to restore public order. This includes natural disasters, epidemics or other serious public health emergencies, and terrorist attacks or incidents that result in domestic violence to such an extent that

State authorities are unable to maintain public order. These were not mentioned specifically before. While the amendment does not grant the President any new powers, it fills an important gap in clarifying the President's authority to respond to these new kinds of emergencies.

The amendment defines the kind of situations in which the President can employ the Armed Forces to restore public order. In our system, responsibility for law enforcement and the maintenance of public order normally lies with the State and local authorities. The Armed Forces can and should enter this arena only in extreme ergencies. The amendment explains that the trigger for the employment of Armed Forces is a condition, which may result from a terrorist attack or a natural disaster, that makes it impossible for regular law enforcement agencies to enforce the laws.

Mr. WARNER. The Senator from Massachusetts is correct about the provision. The Armed Forces have a legitimate role to play in responding to serious emergencies. That role benefits from clear definition. Bringing this statute to date and removing its ambiguities will help the Nation respond better to the next crisis.

Mr. SESSIONS. Mr. President, I rise to compliment the distinguished chairman and ranking member of the Armed Services Committee for their work in bringing forth the National Defense Authorization Act for fiscal year 2007 through conference. This Act supports our Armed Forces during this critical period in our Nation's history.

In particular, I would like to note the House and Senate conferees full support for the administration's missile defense activities. The conference report before us fully funds the President's request for missile defense activities—reflecting strong confidence in and support for the current program.

The recommendations of the conferees with respect to missile defense follow very closely the actions taken in the national Defense authorization bill for fiscal year 2007—as passed by the full Senate earlier this year.

Notably, the conference report reflects the consensus view of the Senate and House that the Department of Defense must accord a priority to those near-term missile defense capabilities that are now beginning to provide a measure of protection for the American people, our deployed forces, and our friends and allies.

The need to emphasize near-term missile defense capabilities was brought home to many of us by the fourth of July ballistic missile launches by North Korea, where six missiles of short-, medium-, and long-range were tested.

Similarly, I just returned from the Ballistic Defense Annual Conference in London where over 900 delegates from over 20 nations discussed near and long term missile requirements in Asia and Europe. Among the key issues was the 3rd site requirement in Europe—a site designed to protect the United States and our NATO allies; a site which will provide an additional mix of options, both military and diplomatic to us and our NATO partners as the specter of missile blackmail increases.

On Independence Day, for the first time ever, Americans witnessed their country activate a missile defense system to protect our homeland against long-range ballistic missiles. This was certainly an epiphany for some and a wake up call for friends and foes alike.

Missile defense has thus become part of the diplomatic and military tool set available to our President and other senior policymakers.

Some critics of missile defense questioned whether the ground-based midcourse defense system would be able to intercept a long-range ballistic missile fired by North Korea.

Lieutenant General Obering, Director of the Missile Defense Agency, expressed confidence that the ground-based midcourse defense, GMD, system would be able to address a limited threat posed by North Korea.

He said that while the entire system had not undergone the full comprehensive testing regime he has planned, General Obering flatly stated he believed the system would, if need be, work to knock down a North Korean missile.

The successful intercept test of a long-range ballistic missile on September 1 confirms General Obering's assessment that the current GMD system has the capability, though not fully developed and tested, to defend America.

Both of these recent tests—the North Korean launches of July and our GMD test earlier this month—confirm, more broadly, the wisdom of the decision by President Bush in 2002 to begin deployment of an initial set of missile defense capabilities.

In less than 2 years, we have laid the infrastructure in Fort Greely, Alaska, and elsewhere so that this country at last is ready to defend itself against long-range ballistic missiles fired against our homeland.

The successful intercept of a long-range ballistic missile target on September 1 was the most operationally realistic test for the ground-based midcourse defense system conducted to date.

It included an operationally configured interceptor, an operational radar, and operational crews.

Critics continue to highlight reports of earlier unsuccessful missile defense testing, but the truth is that since 2001, we have had 23 successful hit-to-kill intercepts against all ranges of ballistic missiles, from the shortrange to the longrange.

In the past 90 days alone, we have conducted four successful engagements of short-, medium-, and long-range ballistic missile targets—using Aegis BMD, THAAD, PAC–3, and GMD. I will submit for the RECORD a letter from the Under Secretary of Defense for Acquisition, Technology and Logistics Kenneth J. Kreig to Congressman IKE SKELTON on September 19, 2006, which discusses ground-based midcourse defense system testing. I think the letter is illustrative of the points I made here regarding our efforts to bring a robust missile defense system on line.

While more testing is necessary and planned to ensure confidence in the effectiveness of the defenses we field, we should take comfort in the knowledge that we have demonstrated fully that we can engage ballistic missile targets of all ranges.

Some editorial writers also like to remind us that the budget request for missile defense is close to $10 billion per year. While this is indeed a significant sum, we should bear in mind that this funding figure reflects research, development and fielding not for a single missile defense system, but for a number of missile defense capabilities based on land, on ships, on aircraft, and in space.

These include Patriot PAC–3, terminal high altitude area defense system, THAAD, ship-based Aegis BMD, the ground-based midcourse defense system, the airborne laser, the kinetic energy interceptor, and a host of sensors and the command and control links necessary to tie all these elements together.

In conclusion, I thank the conferees for fully supporting the administration's missile defense program and note the consensus within Congress to get on with the fielding of missile defense capabilities that are now demonstrating testing success and providing a measure of protection for our homeland and deployed forces.

This is a consensus that stretches back at least as far as the National Missile Defense Act of 1999, when Congress stated that:

> it is the policy of the U.S. to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack. . . .

Those of us who supported this legislation—indeed all of us in Congress—should be gratified to see how far we come in such a short time.

Mr. President, I ask unanimous consent that the letter to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE UNDER SECRETARY OF DEFENSE,
*Washington, DC, Sept. 19, 2006.*

Hon. IKE SKELTON,
*House of Representatives,*
*Washington, DC.*

DEAR REPRESENTATIVE SKELTON: Thank you for your August 29 letter concerning Ground-based Midcourse Defense System testing. The Secretary of Defense asked that I respond.

Since the Secretary's comments at Fort Greely and your recent letter to him, the Missile Defense Agency completed a successful end-to-end flight test of the long-range missile defense capability on September 1.

This test began with the lanch of a threat representative target on a realistic trajectory across an operational, upgraded, early warning radar manned by warfighters in California. An intercept solution was then generated using the operational command and fire control system, also manned by warfighters, and an operational interceptor was launched from an operational site. Given necessary range and safety limitations, a 5-hour target launch window was defined, but the warfighters operating the system did not receive prior notice of target launch.

The flight test was representative of an attack by a single, relatively unsophisticated, but lethal, hostile missile. While this test was a success, the Ballistic Missile Defense System (BMDS) test program is by no means complete. Later tests will involve different trajectories and engagement geometries, different target characteristics and countermeasures, and different raid patterns and composition. Some will be successful, and some will not, but all will contribute to moving the program forward.

Each of these tests, and those of the other components of the BMDS, builds on the knowledge gained from previous tests and adds new and challenging objectives to demonstrate enhanced capability. The goal is to devise scenarios that test each system to the maximum extent possible to increase knowledge of, and confidence in, system performance, while maintaining safety and keeping pace with the advancing threat.

This last point is important. In July, we saw one manifestation of that threat from North Korea in its effort to test an advanced missile capability that could threaten the United States. Iran's intentions also seem increasingly clear as its missile programs progress. That is why the Secretary of Defense has endorsed a capability-based acquisition approach to developing missile defenses, allowing us to deploy militarily useful capability while we continue to enhance it.

Over the past 2 decades, you noted the United States has devoted some $100 billion to missile defense. This has occurred under several Administrations and with ever-increasing Congressional support. A substantial portion of this funding went to early research and space-based programs that were cancelled in 1993. Approximately $21 billion has been invested in the Ground-based Midcourse Defense program over the last 10 years. '

The remaining funds have permitted the PATRIOT PAC–3 capability to evolve, so that when it was employed in combat during Operation IRAQI FREEDOM, it was a complete success against Iraqi missiles. The funding supported the sea-based Aegis Ballistic Missile Defense program, which has succeeded in 7 of 8 intercept attempts, with its 18 ships programmed for modification. Aegis ballistic missile defense-equipped ships started operational long-range surveillance and tracking patrols in the Sea of Japan almost 2 years ago. The funding supported the restructured Terminal High-Altitude Area Defense system, capable of intercepting threats in the upper atmosphere as well as just outside the atmosphere, which completed a successful intercept test in July. In addition, the funds were used for sensors and C2 systems integrating all of these components into a layered defensive system that is much more capable than any of the individual elements alone. And finally, the funds support the development of future capabilities including the Airborne Laser, more capable interceptors and space-based sensors to enhance discrimination, and lethality across the entire spectrum of missile defense.

This latest test of the long-range interceptor increases our confidence in the approach to enhance the system's performance. We have a limited, but increasing, capability where none existed before. Four years ago, with the Anti-Ballistic Missile Treaty in effect, this could not have been possible. Today, the Department is on a path to provide critically-needed missile defense protection for our citizens, deployed forces, friends, and allies.

Your continued support of our efforts will ensure we can reach this goal.

Sincerely,

KENNETH J. KRIEG.

Mr. McCAIN. Mr. President, I would like to commend the chairman and ranking member for their outstanding leadership in bringing the Defense authorization bill to closure and thank them for their untiring work concerning this most important legislation. By enacting this legislation, Congress will take a major step forward in ensuring that the defense of our Nation remains the number one priority. That is why I will vote for passage of the conference report on H.R. 5122, the John Warner National Defense Authorization Act for fiscal year 2007.

I would like to take a moment to recognize our distinguished chairman, a man I have known for 33 years, my friend and mentor, the senior Senator from Virginia. No Member of this body has done more for our national security than JOHN WARNER. As a sailor, Marine officer, Under Secretary and Secretary of the Navy, and U.S. Senator, he has always answered his country's call. The dignified and even-handed way in which he has presided over the business of the Committee these past 6 years has enabled it to continue its noble tradition of being an island of bipartisanship in an increasingly unpleasant political era. I am proud that we have named this year's defense authorization act, the last which JOHN WARNER will manage as chairman of the Committee on Armed Services, in his honor, and I thank my friend for all he has done for our Nation.

This legislation authorizes the funding of $462.8 billion in budget authority for defense programs in fiscal year 2007, which is a 3.6 percent increase or $21 billion above the amount authorized by Congress last year. I am pleased to see that this measure meets the President's requested funding level and that the conferees focused much of their efforts on addressing requirements for the ongoing war on terror as expressed by the service chiefs in their unfunded priority lists.

While I am pleased we are able to act on this legislation prior to adjourning for the elections, I am compelled to point out that once again, the Defense Appropriations Act has been decided prior to final action on the Defense Authorization Act. The Defense Authorization Act is intended to provide a framework for the policies and funding levels for the Department of Defense and its programs. The role of the Appropriations Committee is to allocate funding based on policies provided by authorization bills. A continuing trend, however, is an expansion of the role of the Appropriations Committee, which now engages in significant policy decision making. It is my hope that next year we will succeed in passing the authorization measure prior to the appropriations measure.

An important legislative provision contained in the conference report is an amendment which I sponsored on the Senate bill that would require the regular budgeting for ongoing military operations in Iraq and Afghanistan. Over the years, the administration and the Congress have become addicted to paying for these operations through ''emergency'' supplemental appropriation bills. In addition, many defense-related activities that should have been financed through the normal appropriations process have been funded through these emergency supplementals. Additionally, non-defense-related spending has also found its way into these bills further undermining the budget process. This method of funding has unfortunately become the rule rather than the exception, but with this provision it will no longer be allowed. The next budget submission will be expected to include funding required to conduct ongoing operations through the following year.

It should now be obvious that the current rate of growth in the cost of defense programs is reaching unsustainable levels. Over the intermediate term, this will pose a threat to not only our economic stability but also our national security. For this reason, next year I will propose an aggressive and comprehensive defense acquisition reform agenda. I have called for, and hope to obtain, the assistance of both the Department of Defense as well as the defense industry in this regard.

The need for such an agenda is clear. Over the last few years, the defense acquisition process has shown itself to be broken. This has been shown not only by the Air Force's proposed lease of Boeing 767 tanker aircraft, but also in the Department's procurement strategies for the C–130J, Future Combat Systems, Joint Primary Aircraft Training System, Joint Cargo Aircraft, Joint Strike Fighter, and F–22A Raptor.

Incidentally, I remain concerned about the approach the Air Force is currently taking to recapitalize its tanker fleet. But I will address this issue at another time.

As with past authorization bills, I have included in this year's bill several acquisition reform-related provisions. These provisions include measures that address abuses in the use of cost-type contract billing, financial conflicts of interest involving lead systems integrators, the improper payments of award and incentive fees, and excessive pass-through charges. These provisions also subject the multi-year purchase of F–22 aircraft to greater congressional oversight. There is every expectation that this legislation will be subject to

further legislative efforts in the future. I am hopeful that these measures will be further supplemented by even more comprehensive reforms next year.

The American taxpayer has a right to expect the government to properly manage the allocation of resources, especially at a time when those resources are so critical. While this legislation addresses a great many of the needs of our military, there is still money that is being diverted to unrequested projects. Unauthorized earmarks drain our precious resources and adversely affect our national security.

One of the more egregious add-ons in the legislation currently on the floor is the addition of over $2 billion for 10 C–17 cargo planes that were not requested by the administration. This contradicts the Quadrennial Defense Review and is not in keeping with the President's request. So why are these additional aircraft now part of a bridge fund designed to provide necessary resources for our conflicts in Iraq and Afghanistan? Another reason I find this add-on particularly objectionable is that, going into conference, the House had approved only three additional C–17s and the Senate had approved only two. What we are presented in this legislation is seven more C–17s added by the conferees. This is completely outside the scope of the matter the conferees were tasked to resolve. The practice of adding unrequested, unauthorized, and unnecessary projects onto wartime spending bills must end.

Each and every day the men and women of our Nation's Armed Forces put their lives on the line to protect the freedoms we cherish and it is imperative we provide them with the proper resources. It is our obligation to provide quality of life benefits for our servicemembers and their families. I am confident that enactment of this legislation will accomplish that goal. For example, this conference report authorizes a 2.2 percent across-the-board pay raise for all military personnel. Also included in the report is a provision that prohibits predatory practices by creditors who loan to military personnel. This legislation is a testament to our commitment to the brave men and women of our military who have answered their Nation's call.

The ongoing war on terror has required us to become increasingly reliant on the men and women of our Reserve forces and National Guard. Approximately 40 percent of the ground troops in Iraq and Afghanistan are National Guard and Reserve forces. These soldiers and sailors leave behind friends, families, and careers to go willingly into harm's way for their Nation's cause. We in the Congress owe it to these patriots to ensure we look after their needs. Included in the conference report is the authorization to expand the eligibility for TRICARE to all members of the Selected Reserve. This provision is critical for providing our Reserve forces with the proper care they have earned.

Upon returning home from tours in Iraq or Afghanistan, soldiers and Marines are experiencing less and less downtime before their next deployment. This is not good for morale nor is it good for retention and eventually it will become a readiness issue as recruiting is affected. Fortunately, this legislation authorizes significant increases in recruiting and retention bonuses, as well as substantial increases in educational funds for recruitment purposes. Also provided is authorization for maintaining the Army active-duty end strength of 512,400, the Army National Guard end strength of 350,000, and an increase in Marine Corps end strength to a total of 180,000. This authorized force structure is critical to ensure proper readiness levels so that our military can meet its operational requirements.

As in years past, I am disappointed that the annual ''Buy America'' battle has once again made its way into this legislation. It seems as if every year we fight the same fight in conference. What it really comes down to is what I have stated countless times before: we need to provide American servicemen and women with the best equipment at the best price to the American taxpayer. By following this simple philosophy, we will protect both the men and women in uniform, as well as our domestic defense industry.

The international considerations of Buy America provisions are immense. Isolationist, go-it-alone approaches have serious consequences on our relationship with our allies. Our country is threatened when we ignore our trade agreements. Currently, the U.S. enjoys a trade surplus of $31 billion in defense and aerospace equipment. We don't need protectionist measures that detract from international cooperation in order to insulate our defense or aerospace industries. Critical international programs, such as the joint strike fighter and missile defense, could be placed in jeopardy when our allies reassess our defense cooperative trading relationship. If we enact laws that isolate our domestic defense industry, allies could potentially retaliate and hinder our ability to sell U.S. equipment which would in turn adversely affect our interoperability with NATO and other allies.

Although there are examples of why this bill is far from perfect, I am putting my reservations aside to support the final passage of this conference report. The John Warner National Defense Authorization Act for fiscal year 2007 is legislation that further strengthens our Nation's military and gives the Department of Defense the tools it needs to defend our Nation's interests both at home and abroad.

I urge my colleagues to support this important legislation.

Mr. LEAHY. Mr. President, I would like to express my gravy reservations about certain provisions of the fiscal year 2007 Defense authorization bill conference report. This legislation poorly handles key provisions related to the National Guard, which—as the events since September 11th have highlighted—is critical to our Nation's defense. The final conference report drops the reforms known as the National Guard Empowerment Act, a bill that would have given the National Guard more bureaucratic muscle inside the Pentagon. It would have cleared away some of these administrative cobwebs and given the Guard the seat at the decision-making table that it needs and deserves. It also should concern us all that the conference agreement includes language that subvert solid, long-standing posse comitatus statutes that limit the military's involvement in law enforcement, thereby making it easier for the President to declare martial law. There is good reason for the constructive friction in existing law when it comes to martial law declarations.

Combined, these moves amount to a double punch against the National Guard. The National Guard has done so much to protect the security and safety of our country. Yet the authorization bill sends the signal that we are not interested in truly supporting them. This conference report says we do not want to address glaring problems that have surfaced during their increasingly frequent deployments. And, incredibly enough, it says to the Guard that other military forces are better to carry out tasks here at home. In short, this bill goes in the wrong direction.

Let's review what the 500,000 men and women of the National Guard do for the country. The National Guard is essential to the military's missions at home and abroad. More than 10,000 members of the National Guard are currently called up for domestic options, most along the border and involved in counter-drug operations.

Almost 60,000 citizen-soldiers are deployed overseas, almost 40,000 involved in Iraq deployments. Over 6,000 members of the Air Guard are deployed. And let's remember, that at the high-water mark, the Guard made up almost 40 percent of the troops on the ground in Iraq.

It is also clear that we are going to need the Guard even more in the future. Consider the information reported in a New York Times article from last Friday. The active U.S. Army is being deployed at such a high rate that it appears increasingly likely that the National Guard is going to need to be tapped once again to make the troop levels.

Any way you cut it, the National Guard is absolutely essential to our Nation's defense. We cannot fight our wars abroad, we cannot secure the country at home, and we cannot response to large-scale emergencies without the Guard.

Given the fact that the National Guard is one of the country's most valuable and needed forces, one would think that our leaders in the Department of Defense would be spending significant time developing policies and

budgets plans that truly support the Guard. For example, I would think it logical to make the replacement of the Guard's aging and worn equipment a priority. I would think it logical to give the National Guard a stronger voice in policymaking decisions and in setting budgetary priorities that affect the National Guard. I clearly see the benefits of deferring to the Adjutants General and the Nation's governors, those who control and oversee the Guard, when determining how best to utilize Guard at home during domestic emergencies.

Instead of these good policy goals and practices, we have only a long list of unfair and ill-conceived decisions from the Pentagon that do very little to support the Guard in reality. And these examples are only the tip of the iceberg.

Last December, the Army and the Air Force decided to try to make precipitous cuts to the National Guard. The Army sought to cut the Army Guard by almost 17,000 soldiers, while the Air Force drove for reductions of almost 14,000 airmen. These personnel cuts were made without consultation with the National Guard Bureau, the States Adjutants General, and the Nation's Governors. While Congress was successful in turning those recommendations back, the fact remains that the active force still desired to balance its budgets at the expense of the Guard.

In late Spring of last year, the Air Force forwarded a list of base closure recommendations the cut deeply into the Air National Guard. The closure list took away flying missions in States in which the Air National Guard is the only Air Force presence in the State. No consideration was made of this crucial link between local communities and the armed forces. Nor did the Air Force consider the Air National Guard's homeland security capabilities. Why were such ill-advised recommendations made? The reason is that the Air National Guard was not involved in the force structure review process.

Similarly, in 2002, there was no consultation with the Air National Guard when the Air Force decided to take away the Air National Guard's B–1 bomber units, which, as a GAO study underscored, were cheaper to operate, more efficient, and more effective than their active duty counterparts.

Further, since September 11, torturous debate has developed in the Pentagon whenever the National Guard is needed for a large-scale operation at home, such as during Hurricane Katrina. We have learned that the Guard works optimally at home when it serves under the command-and-control of the Nation's Governors, with Federal reimbursement, under title 21 of the Federal Code.

This title 32 status ensures that locally elected officials remain in control of military forces operating at home. Because the National Guard comes directly out of these local communities, posse comitatus statutes do not apply. This title 32 arrangement has been used most recently to increase security at the border, but it has previously been used effectively to have the Guard provide added security at the Republican and Democratic National Conventions, the G8 Summit, the Nation's airports, and around the Capitol Building in Washington.

There seems to be some kind of reflexive reaction within the Department of Defense against having the Guard and the Governors remain in control of operations at home. In fact, a sizeable contingent exists within the Pentagon to have the active duty military control the National Guard and other military personnel and assets. So every time there is a natural disaster or other emergency, the Pentagon engages in a lengthy debate back-and-forth about control of the Guard. To date, these debates have led to sensible outcomes. But it should not be so difficult and uncertain.

Finally, the National Guard has little influence at the senior ranks within the Army and the Air Force. The number of high-ranking officers is completely imbalanced between the Guard and the active forces. While the National Guard constitutes a high percentage of our total number of ground troops, it has just a sliver of the overall percentage of three- and four-star general officers. And, while the Air National Guard constitutes a high percentage of the Air Force's mobility assets and a similarly high percent of its strike assets, the Air Guard has a negligible share of the high-ranking positions, where important decisions are made.

The National Guard Empowerment Act seemed to be a logical response to these ill-advised policy positions and imbalanced bureaucratic structure. The entire thrust of the legislation rests in increasing the bureaucratic muscle of the National Guard. The idea behind it is to prevent some of these ill-advised policies from moving forward. More importantly, the legislation is designed to firmly identify the uses of the National Guard, ensure the force is ready and equipped for its critical homeland security missions by bringing its organizational ties in line with its real responsibilities and accomplishments.

Specifically; the legislation, as included in the Senate's version of the Defense authorization bill contained four major provisions. First, it would elevate the Chief of the National Guard Bureau from the rank of lieutenant general to full general.

Second, the Deputy Commander of United States Northern Command, the military headquarters designed to oversee military forces used in the United States operationally would be mandated to come out of the ranks of the National Guard. Third, the National Guard would be redefined as a joint bureau of the Department Defense, rather than a branch of Army and the Air Force, enabling the Guard to maintain its role as the primary military reserve, while allowing the National Guard to avoid bureaucracy within the Defense Department. Finally, the National Guard would have formally be tasked with working with the States to identify gaps in their resources to respond to emergencies at home.

This proposal is not only targeted, but also modest. Our original legislation, S. 2658, the National Defense Enhancement and National Guard Empowerment Act of 2006, would have additionally placed the Guard Bureau chief on the Joint Chiefs of Staff and given the National Guard separate budget authority. Though we still believe these provisions are important to empowering the National Guard fully, we listened and understood the objections of other senators. We dropped those provisions in the amendment to the Defense Authorization bill to reach a consensus where even more members would agree to the amendment, beyond the already 40 senators who are cosponsoring the baseline legislation.

We can all acknowledge that the National Guard is essential to our Nation's defense, that there has been some questionable policymaking affecting the Guard in recent years, and that the empowerment bill represents a positive step towards strengthening the Guard. Yet where does the final conference report on the defense authorization bill end up on Guard empowerment?

Not only does this conference report unfortunately drop the Empowerment amendment entirely, it adopts some incredible changes to the Insurrection Act, which would give the President more authority to declare martial law.

Let me repeat: The National Guard Empowerment Act, which is designed to make it more likely for the National Guard to remain in State control, is dropped from this conference report in favor of provisions making it easier to usurp the Governors control and making it more likely that the President will take control of the Guard and the active military operating in the States.

The changes to the Insurrection Act will allow the President to use the military, including the National Guard, to carry out law enforcement activities without the consent of a governor. When the Insurrection Act is invoked posse comitatus does not apply. Using the military for law enforcement goes against one of the founding tenets of our democracy, and it is for that reason that the Insurrection Act has only been invoked on three—three—in recent history.

The implications of changing the act are enormous, but this change was just slipped in the defense bill as a rider with little study. Other congressional committees with jurisdiction over these matters had no chance to comment, let alone hold hearings on, these proposals.

While the Conference made hasty changes to the Insurrection Act, the Guard empowerment bill was kicked over for study to the Commission on the National Guard and Reserve, which was established only a year ago and whose recommendations have no real force of law. I would have never supported the creation of this panel—and I suspect my colleagues would agree with me—if I thought we would have to wait for the panel to finish its work before we passed new laws on the Guard and Reserve.

In fact, we would get nothing done in Congress if we were to wait for every commission, study group, and research panel to finish its work. I have been around here over 30 years, and almost every Senator here knows the National Guard as well as any commission member. We don't need to wait, and we don't need to study the question of enhancing the Guard further. This is a terrible blow against rational defense policy-making and against the fabric of our democracy.

Since hearing word a couple of weeks ago that this outcome was likely, I have wondered how Congress could have gotten to this point. I can only surmise that we arrived at this outcome because we are too unwilling to carry out our article I, section 8 responsibilities to raise and support an Army. We have it in our constitutional power to organize the Department of Defense. The Goldwater-Nicholas Act that established a highly effective wartime command structure and the Nunn-Cohen legislation that established the now-critical Special Operations Command came out of Congress.

If the then-stale leadership of the Pentagon had its way, these two critical bills would never have seen the light of day. Today, however, the Pentagon is just as opposed to the Empowerment legislation, and instead of asserting its power, the Congress is punting—just kicking it down the field and out of play.

Also, it seems the changes to the Insurrection Act have survived the conference because the Pentagon and the White House want it. It is easy to see the attempts of the President and his advisors to avoid the debacle involving the National Guard after Hurricane Katrina, when Governor Blanco of Louisiana would not give control of the National Guard over to President and the Federal chain of command. Governor Blanco rightfully insisted that she be closely consulted and remain largely in control of the military forces operating in the State during that emergency. This infuriated the White House, and now they are looking for some automatic triggers—natural disasters, terrorist attacks, or a disease epidemic—to avoid having to consult with the Governors.

And there you have it—we are getting two horrible policy decisions out of this conference because we are not willing to use our constitutional powers to overcome leadership that ranges from the poor to the intemperate in the Pentagon and the White House. We cannot recognize the diverse ways that the Guard supports the Country, because the Department of Defense does not like it—simply does not like it.

Because of this rubberstamp Congress, these provisions of this conference report add up to the worst of all worlds. We fail the National Guard, which expects great things from us as much as we expect great things from them. And we fail our Constitution, neglecting the rights of the States, when we make it easier for the President to declare martial law and trample on local and state sovereignty.

The conference report was agreed to.

(The conference report is printed in the proceedings of the House in the RECORD of September 29, 2006.)

## SECURITY AND ACCOUNTABILITY FOR EVERY PORT ACT—CONFERENCE REPORT

The PRESIDING OFFICER. If the majority leader will suspend, under the previous order, the Senate adopts the conference report to accompany H.R. 4954, the port security bill.

Mr. STEVENS. Mr. President, the passage of this port security legislation marks the first time three Senate committees and their House counterparts have merged their collective expertise and crafted a truly comprehensive approach to port security. A bipartisan group of Members from both Chambers of Congress dedicated several months to developing this bill to better secure America. It is a credit to the Senate and the House that each committee involved agreed to pool their resources, put aside jurisdictional issues, and reach consensus on this bill.

This act strengthens security at our land and sea ports, improves our maritime transportation security strategy, and enhances communication between the Department of Homeland Security and transportation security stakeholders. It includes a plan to get our trade activities up and running again in the event of a transportation security incident. And it creates a pilot program which will study the feasibility of scanning each of the containers—100 percent of the containers—entering our ports.

This legislation will enhance the collection and analysis of information about cargo destined for our ports, and this bill aims to increase awareness of the operations at domestic and foreign ports. Once those in industry share important information about cargo in the international supply chain, we must analyze it quickly. This legislation expedites that process and ensures it begins earlier in the supply chain—before containers even reach our shores. This act requires information about cargo be provided and analyzed before the cargo is loaded on a vessel in a foreign port and shipped here.

This bill also expands several initiatives with a proven track record of success. There are currently five interagency operations centers up and running throughout our country. These centers bring together Federal, State, and local security enforcement officials to ensure communication among them. This act expands this effort to each of the major seaports, and places the Coast Guard in charge of these centers.

This act also builds upon the Department of Homeland Security's, DHS, past cooperation with foreign governments. The container security initiative, CSI, contained within this bill enables the Department, working in partnership with host government customs services, to examine high-risk containerized cargo at foreign seaports before it is loaded on vessels destined for the United States.

The Customs-Trade Partnership Against Terrorism (C–T PAT), a voluntary public-private partnership, is also strengthened in this bill. The Commissioner of Customs and border protection will now be able to certify that a business's supply chain is secure from the point of manufacture to the product's final U.S. destination. Under this legislation, whether cargo crosses our border at Laredo or arrives on a ship from Hong Kong, participating companies' supply chains will undergo a thorough security check. This will add another layer of security to the C–T PAT initiative. Since this is a voluntary system, we have also included provisions which encourage those in industry to go above and beyond the security requirements already in place. These new incentives include expedited clearance of cargo.

Mr. President, while I was disappointed earlier this year by the negative public reaction to foreign investment in our Nation's port terminals, we learned a great deal from hearings held by the Commerce Committee on this matter. As a result of those hearings, this bill requires DHS to conduct background checks on all port personnel. Current law only requires the Transportation Security Administration to perform checks on those workers directly tied to transportation at the port, or involved in its security. From the Commerce Committee hearings, it was evident that a more stringent requirement was needed.

To prevent future attacks, we must secure our ports. This bill is a major step forward in this effort. Senator INOUYE is my co-chairman on the Commerce Committee, and I thank him and Senators GRASSLEY, BAUCUS, COLEMAN, COLLINS and LIEBERMAN for their leadership in drafting this bill, as well as the House committee leaders who were involved. I would also like to thank the staff members on each of the committees—they have worked tirelessly on this bill.

Our country's ports have become enormous operations. To fully address security of our ports, it is important that we appreciate the impacts security requirements might have on economic efficiencies in transportation